MONROE D. KIAR

TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
Davie, Florida 33314
(954) 584-9770

TOWN ATTORNEY REPORT

DATE: January 14, 2004

FROM: Monroe D. Kiar

RE: Litigation Update

1. **Sunrise Water Acquisition Negotiations**: On August 27, 2003 and August 28, 2003, Mr. Stanley Cohen met individually with each Councilmember as well as Town Staff and the Town Attorney relevant to exploring the feasibility of the Town acquiring the Sunrise Water System and the Ferncrest Facility. The Town Attorney has had a number of conversations with Mr. Ken Cohen, who has confirmed that the Town Staff is continuing to conduct further studies regarding the acquisition of the western area Utilities as well as the Ferncrest Utilities Facilities in the east. Mr. Cohen recently indicated that the Town Staff is preparing a presentation to be made before the Town Council in the near future as to its options and will be seeking direction from the Town Council as to what action it wishes to take in this matter. He further advises that in the meantime, additional steps and alternatives are being researched to help bring the issue to a conclusion.

2. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A Final Order and Judgment Granting Petition for Common Law Certiorari was entered by Judge Patricia Cocalis in these two consolidated cases. Pursuant to the direction given to Mr. Burke by the Davie Town Council, an appeal of the Order entered by Judge Cocalis was filed with the 4th District Court of Appeal, but the 4th District Court of Appeal denied the Town's Petition for Writ of Certiorari on the Merits and Without Opinion, ordered that the matter be remanded back to the Town Council and required it to vote on the application based on the record as it existed prior to the filing of the Writ of Certiorari and in accordance with the Final Judgment entered by Judge Cocalis. The Petitioner requested the matter again be placed on the Town Council Agenda and the matter was again heard on October 2, 2002, by the Town Council. After a presentation by Mr. Burke, the applicant and Staff evidence was presented by those in attendance who spoke in favor and in opposition to the two Petitions, the Town Council voted 4 to 1 to deny each petition. A Petition for Supplemental Relief to Enforce Mandate or in the Alternative, Supplemental Complaint for Writ of Mandamus and for Writ of Certiorari was thereafter filed by the Plaintiff, Griffin-Orange North, Inc. and Seventy-Five East, Inc. with regard to the Quasi Judicial Hearing held before the Town of Davie on October 2, 2002. The Plaintiffs have filed these pleadings

requesting that the Court order the Town of Davie to grant them the B3 Zoning and they are seeking a recovery of their attorney's fees and court costs for their preparation of the filing of this new Petition for Supplemental Relief to Enforce the Court's Mandate. Essentially, the pleadings request that the Circuit Court quash the Town Council's second denial of the Plaintiffs' Zoning Application and request that the Court compel approval of the B3 Zoning designation. The Plaintiffs filed their pleadings with the same Court (Judge Cocalis) which previously entered a Final Judgment in favor of Plaintiffs, and also filed an identical original action to cover all of their procedural basis. Subsequent thereto, the Plaintiff filed a Motion to Consolidate the Petition for Supplemental Relief to Enforce Mandate as well as the second lawsuit it initiated and requested that both lawsuits be heard before the original judge in this case, Judge Cocalis, who is no longer in the Civil Division, rather than Judge Robert Carney, who has taken over Judge Cocalis' prior case load. The hearing on the Petitioner's Motion to Consolidate a new Petition for Writ of Certiorari with its previously filed action was heard on December 17, 2002. Judge Carney the property owner's Motion to Consolidate, but denied the property owner's second Motion, which was to transfer both actions back to Circuit Court Judge Patricia Cocalis. On January 30, 2003, there was an initial hearing and oral argument was presented by both sides before Judge Robert Carney relevant to the property owner's Motion to prohibit the Town of Davie Administrator from proceeding with Administrative re-zoning of the property. At the January 30, 2003 hearing, Judge Carney stated he wanted to hear more argument on this matter and scheduled another hearing for February 14, 2003. On February 14, 2003, the Judge denied the Writ of Prohibition and Motion to Stay and as indicated, in his view, the Court did not have jurisdiction to prevent the Town of Davie from carrying out its municipal function of re-zoning property. Accordingly, as confirmed by Mr. Burke, there are no legal impediments to the Town moving forward with the Town Administrator's application to re-zone the two parcels to B2 and SC. However, at the Town Council Meeting of May 7, 2003, the Town of Davie and the property owner entered into an agreement which was filed with the Court and approved by the Town Council which would temporarily abate all litigation activities in the pending lawsuit as well as abate the moving forward with the Town Administrator's application to re-zone the two parcels to B2 and SC. This agreement was entered into to enable the County to obtain an appraisal and to continue its negotiations in an effort to possibly purchase the subject properties as a public park. At the July 2, 2003 Town Council Meeting, Councilmember Paul advised the Town Council that the County had completed its appraisal and the County and property owner had reached agreement as to the purchase price. The Council had previously been advised that this matter was to be heard and considered by the County Commission at its meeting in August, 2003 and accordingly, an Agreed Motion to Extend the Abatement of this litigation was prepared by Mr. Spencer, the attorney for the property owner, and reviewed by the Town Attorney's Office and subsequently approved by the Town Council at its July 8, 2003 Meeting. The Agreed Motion has been filed with the Court and the litigation continues to be abated pending final disposition by the County. <u>As indicated previously, at the Town Council Meeting of September 17, 2003, the Town Council was advised that the County Commission had voted 7-2 to approve the purchase of the two parcels which are the subject matter of this litigation. As a consequence, the litigation has been abated until such time as the closing and the purchase of the property has been consummated at which time Mr. Burke will have the lawsuit dismissed as to the issues</u>

surrounding the litigation, namely whether or not the property owner has a right to re-zone the two parcels to B-3 zoning as this would be a moot issue. Recently, the Administration was able to confirm that the purchase has been concluded and accordingly, on this date, the Town Attorney so advised Mr. Michael Burke, our special legal counsel, that the purchase had been concluded. Mr. Burke indicated that he will contact Mr. William Spencer, the attorney for the Plaintiff, and request that Mr. Spencer dismiss both lawsuits forthwith.

3. **Town of Davie v. Malka:** As the Town Council has been previously advised, the Town Attorney's Office has kept close contact with the Building Department relevant to the progress of this particular property. The Building Department is continuing to keep a close eye on this particular property owner to ensure that the property owner is moving ahead with final completion of all additions of the structure as promised. As previously indicated, the Town Attorney has recently spoken with Mr. Bill Hitchcock, the Building Official, who confirmed that the property owner is moving ahead with completion of all additions to the structure as promised.

4. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services**: As indicated in prior Litigation Reports, on May 24, 2002, Judge Fleet issued a 19 page Order on the Motion for Temporary Injunction in which he concluded that the Amendments regarding the Citrus Canker litigation enacted by the Florida Legislature as codified in Florida Statutes Section 581.184, was an invalid invasion of the constitutional safeguard contained in both the United States Constitution and the Constitution of the State of Florida. The Judge ultimately entered a statewide Stay Order enjoining the Department of Agriculture from entering upon private property in the absence of a valid search warrant issued by an authorized judicial officer and executed by one authorized by law to do so. The Florida Department of Agriculture and Consumer Services filed its Notice of Appeal seeking review by the 4th District Court of Appeal. The Department of Agriculture also filed a Motion with the 4th District Court of Appeal seeking that the appellate procedures be expedited, and a motion in which there was a suggestion for "bypass" certification to the Supreme Court of Florida. The Department of Agriculture contended that in light of the gravity and emergency nature of the issues, the matter should be certified by the 4th District Court of Appeal directly to the Supreme Court for its adjudication since the Department of Agriculture anticipated that regardless as to how the 4th District Court of Appeal rules on the matter, it would in fact be appealed by either the Department of Agriculture or by the County and coalition of cities to the Supreme Court of Florida for final adjudication. The 4th District Court of Appeal in fact for only the fourth time in its history, did certify this matter directly to the Florida Supreme Court for adjudication. The Florida Supreme Court however, refused to hear this matter at this stage and remanded it back to the 4th District Court of Appeal for further proceeding. Both the Florida Department of Agriculture and Consumer Services and the County and coalition of cities have filed their respective Appellate Briefs. The Florida Department of Agriculture filed a Reply Brief to the Brief filed by Broward County and the coalition of cities. The Town Attorney along with several other municipal attorneys, at the request of the Chief Appellate Attorney for Broward County, Andrew Meyers, attended the oral argument in these proceedings before a three judge panel at the 4th District Court of Appeal Courthouse in Palm Beach County, on December 4, 2002. On January 15, 2003, the 4th District Court of

Appeal issued its opinion relevant to the appeal filed by the Florida Department of Agriculture and Consumer Services challenging the Order of Judge Fleet. The 4th District Court of Appeal found that Section 581.184 of the Florida Statutes (2002) requiring removal of Citrus trees within the 1900 feet of a tree infected with canker did not violate due process and therefore, was constitutional. The 4th District Court of Appeal also found Section 933.07(2) of the Florida Statutes allowing area wide search warrants unconstitutional and a violation of the 4th Amendment. The Court however, did rule that multiple properties to be searched may be included in a single search warrant and the issuance of such a warrant should be left to the discretion of the issuing magistrate. The 4th District Court of Appeal entered an Order quashing Judge Fleet's Order and in response, the County and coalition of cities, including the Town of Davie, filed a Notice to Invoke Discretionary Jurisdiction of the Supreme Court and to review the decision of the 4th District Court of Appeal. The Notice to Invoke Discretionary Jurisdiction also requested the re-imposition of a temporary stay. The Supreme Court entered an Order agreeing to review this matter, but refused to re-impose the automatic stay prohibiting the removal of healthy, but exposed Citrus trees during the pendency of this litigation. The Florida Department of Agriculture has resumed cutting healthy, but exposed trees in Central and North Palm Beach as well as in the cities of Cape Coral and Orlando. As indicated in the last several Town Attorney's Reports, the County continues to aggressively oppose the issuance of warrant applications in Broward County regarding the cutting of healthy, but exposed Citrus trees. On July 7, 2003, a hearing was held before Judge Fleet on the coalition of cities and County's Motion for Reinstatement of a Temporary Injunction with regard to the eradication of healthy, but exposed trees within 1900 feet of an infected tree. The Judge heard extensive oral argument on both sides and afterwards, ordered the Department of Agriculture and Consumer Services to comply with a prior Order concerning the method in which the Department is to measure the 1900 foot zone surrounding a Citrus tree within which exposed Citrus trees must be destroyed. The Court issued a written Order granting a Temporary Injunction (the "Temporary Injunction Order"). The Temporary Injunction Order prohibits the Department from using a method of measurement that substantially departs from the 1900 foot tree to tree measurement expressly required by Section 581.184(4)(c), Fla. Stat. (2002). The Temporary Injunction Order also prohibits a material violation of the 1900 foot destruction radius mandated by Section 581.184(1)(b) and Section 581.184(2)(a). The Temporary Injunction prohibits the Department from cutting down trees on the basis of past samples that were the product of flawed chain of custody and diagnosis procedures which procedures the Department itself has since abandoned. Under the Court's ruling now in effect, the Department of Agriculture must measure precisely from the infected tree to the drip line of any uninfected, but exposed tree within the 1900 foot zone rather than using satellite technology to set the 1900 foot radius. The Order granting the Temporary Injunction has been appealed by the Florida Department of Agriculture to the 4th District Court of Appeal and that Appeal is pending. <u>As previously indicated, the Florida Department of Agriculture is seeking a review of the Trial Court's Order of July 18, 2003, which directs the Department to utilize specific management and diagnostic methodologies in proceedings with the Citrus Canker program. The latest appeal pertains to the most recent Injunction Order entered by Judge Fleet in the Citrus Canker litigation which has now been ongoing for 3 years. Oral argument with regard to the 4th District Court of Appeal matter has not yet been scheduled. On October 7, 2003, however, oral argument</u>

before the Supreme Court in the original "Fleet" case was heard. The Supreme Court granted both sides a total of 45 minutes to argue their case. As previously indicated, the Chief Appellate Attorney for Broward County indicated that he felt very comfortable with his oral presentation before the Supreme Court. On January 14, 2004, the Town Attorney spoke with Mr. Andrew Meyers, the Chief Appellate Attorney for Broward County, and was advised that the Supreme Court has still not yet ruled on this matter and that they are awaiting the Court's ruling. Further, Mr. Meyers indicated that the 4th District Court of Appeal had also not yet ruled as of January 14, 2004.

5. **Christina MacKenzie Maranon v. Town of Davie**: The Town of Davie filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. In response, the Plaintiffs filed an Amended Complaint naming the Town of Davie only as a defendant. Officer Taylor was no longer named a party to these proceedings. The Town thereafter, filed a Motion to Dismiss the Amended Complaint, but after hearing the Motion to Dismiss, it was denied and the Plaintiff was given leave to file a new Amended Complaint in these proceedings. As previously reported, the Plaintiff filed an Amended Complaint and our special legal counsel, Mr. McDuff, prepared and filed an appropriate Answer with the Court. The Town Attorney spoke with Mr. McDuff's legal assistant on January 14, 2004, and was advised that their office had completed the discovery in this matter and is preparing for trial. In the meantime, however, the Plaintiff has not asked for a trial date and none has been set. Mr. McDuff remains confident that ultimately, the matter will be dismissed on its merits.

6. **Spur Road Property**: As indicated by Mr. Willi to the Town Council at its meeting of January 2, 2003, Mr. Burke advised Mr. Willi that the 4th District Court of Appeal had affirmed the decision of the Florida Department of Transportation to accept the bid of Kevin Carmichael, Trustee, for the sale and purchase of the property which forms the subject matter of the State Road 84 Spur property litigation. At the Town Council Meeting of February 5, 2003, Mr. Willi requested that the Town Council grant him authority to take whatever legal action was necessary to obtain the property in question. That authority was given to him by the Town Council. At the Town Council Meeting of November 5, 2003, the Town Council authorized Mr. Willi to retain the law firm of Becker & Poliakoff to institute an eminent domain proceeding relevant to this property. A Special Executive Session with the attorneys for Becker & Poliakoff and the Town Council was conducted on December 17, 2003. On January 14, 2004, the Town Attorney spoke with Mr. Daniel Rosenbaum, our special legal counsel. Mr. Rosenbaum indicates that the attorneys in his office are finalizing with the retained professionals, the issues that have to be addressed and Mr. Rosenbaum expects to report back within 30 days.

7. **DePaola v. Town of Davie:** Plaintiff DePaola filed a lawsuit against the Town of Davie and the Town filed a Motion to Dismiss. The Motion to Dismiss was heard by Judge Burnstein who requested that both sides file Memoranda of Law in support of their positions and she took the case under advisement. Both sides did file their Memoranda of Law in support of their positions on the Town's Motion to Dismiss, and on November 13, 2002, the Court entered an Order granting the Town's Motion to Dismiss and entered an Order of

Dismissal. The Court found that Mr. DePaola had administrative remedies as a career service employee, either by pursuing a civil service appeal or by a grievance procedure established under a collective bargaining agreement, but he had failed to pursue his administrative remedies. A copy the Court's Order of November 13, 2002, has been previously provided to the Town Council for its review. The Plaintiff DePaola filed a motion with the Court for re-hearing of the Town's Motion to Dismiss, which motion was denied by the Trial Court. The attorneys for DePaola filed a Notice of Appeal of the Trial Court's decision to the 4th District Court of Appeal where the matter is now pending, but failed to file their Appellate Brief within the time set by the Rules of Appellate Procedure. As previously indicated, the Town's Motion to Dismiss filed with the 4th District Court of Appeal due to the Plaintiff's failure to file in a timely manner its Appellate Brief was denied and the 4th District Court of Appeal extended the time in which the Plaintiff could file his Brief. The Plaintiff thereafter, did file his Brief and Mr. Burke's office in turn, prepared and filed its Answer Brief on December 9, 2003. Thereafter, the Appellant, Mr. DePaola, filed his Reply Brief with the 4th District Court of Appeal of Florida, and a copy has been furnished to the Town Administrator, Mayor and Councilmembers for their information. The Town Attorney spoke with Mr. Burke on January 14, 2004 and was advised by Mr. Burke that nothing new has transpired in this matter. Oral argument in this case is scheduled before the 4th District Court of Appeal for February 10, 2004.

8. **Southern Homes of Davie, LLC v. Davie (Charleston Oaks Plat) Case No. 02-015674 (11):** The Town was served with a Summons and Complaint for Declaratory Judgment and Injunction and Petition for Writ of Mandamus with regard to Case Number 02-015674 (11) instituted by Southern Homes of Davie, LLC against the Town of Davie relevant to the "Charleston Oaks Plat". The Florida League of Cities has accepted responsibility for providing a defense to the Town of Davie relevant to this lawsuit and has assigned the case to Attorney Michael Burke. The Plaintiff is seeking both equitable relief and monetary damages against the Town. The Plaintiff is alleging that they have suffered injury as a result of the Town's refusal to process, review and/or approve its Site Plan Application while the Zoning in Progress has been in effect. They are seeking an Order declaring that the Plaintiff is entitled to approval of its Site Plan Application and that the Town be estopped to apply the "Zoning in Progress"; declaring that the Zoning in Progress does not exist and/or does not apply to Plaintiff's Site Plan Application and/or Plaintiff's property, and other relief. Since then, the Plaintiff has filed a second companion case also seeking a Declaratory Judgment and Injunction and Petition for Mandamus against the Town of Davie with regard to the "Flamingo Plat". This too, has been accepted for defense by the Florida League of Cities. Both cases have been since consolidated for discovery purposes and Mr. Burke's firm has filed its response to each Complaint filed in the two lawsuits. As indicated in prior Town Attorney's Reports, Southern Homes has taken the position that it was not required to dismiss the lawsuit until site plans for the project were approved by the Town. At its meeting of September 17, 2003, the Town Council approved the site plans for the Charleston Oaks Plat. It had previously approved the site plan for the Flamingo Plat. At the Town Council Meeting of September 17, 2003, the property owner with his legal counsel present, Mr. William Laystrom, stipulated to the dismissal of the two lawsuits. A proposed Settlement Agreement dismissing these lawsuits in accordance with the property owner's agreement, was presented to Mr. Laystrom and was thereafter signed

by the property owner. The agreement was thereafter presented by the Town Attorney's Office to the Town Council for its consideration and was approved by the Town Council at its meeting of November 5, 2003. The fully executed Settlement Agreement was thereafter transmitted by Mr. Burke to the Court along with two proposed Orders of Dismissal. As of this date, Judge Burnstein has signed one Order of Dismissal and Mr. Burke's office is awaiting receipt of the second. Once the second Order of Dismissal has been received and both cases dismissed, the Town Attorney's Office will so advise the Council and thereafter, close its file on this litigation.

9. **Asset Management Consultants of Virginia, Inc. v. Town of Davie:** The Town of Davie has been sued by Asset Management Consultants of Virginia, Inc., who are seeking a refund of a public service fee imposed on certain property owners by the Town pursuant to Ordinance No. 99-35 of the Town Code. The Town filed a Motion to Dismiss the Complaint along with a Memorandum of Law in support of the Town's position. The Town's position is that at the time of the passage of Ordinance No. 99-35 of the Davie Town Code, it was properly initiated and therefore, the Plaintiff is not entitled to a refund of the public services fees which were subsequently declared unconstitutional and contrary to Section 192.042 of the Florida Statutes by the Florida Supreme Court in 1999. The Town of Davie's Motion to dismiss the lawsuit was heard on Friday, November 15, 2002, and after Judge Greene heard lengthy oral argument on both sides, the Court granted the Town of Davie's Motion to Dismiss Plaintiff's Complaint. The Judge granted our Motion to Dismiss with Prejudice as to Count II, which was a claim by the Plaintiff against the Town of Davie for unjust enrichment with regard to the Town of Davie's collection of the public service fee which was subsequently ruled unconstitutional. The Judge also granted the Town's Motion to Dismiss Counts I and III in which the Plaintiff sought a declaratory judgment and a refund of the public services fee that was collected relevant to the Plaintiffs. The Judge also struck with prejudice that portion of Count III which sought prejudgment interest against the Town if the Plaintiff is successful. The Judge did give the Plaintiff 20 days in which to amend Count I and the balance of Count III. A copy of the Court's Order of November 15, 2002, was previously forwarded to the Town for distribution to the Mayor and Councilmembers. The Plaintiffs filed an Amended Complaint and Mr. Johnson's office filed an Answer to the remaining Count which seeks a refund of the public services fee that was collected from the Plaintiffs. As previously indicated, oral argument on the Town's Motion for Summary Judgment in this case was previously scheduled for October 9, 2003. However, in the interim, the attorneys for the Plaintiff, the law firm of Atkinson, Diner, Stone, Mankuta and Ploucha, P.A. moved to withdraw as counsel for the Plaintiff, Asset Management Consultants of Virginia, Inc. The Court granted their Motion to Withdraw and stayed the case for 45 days in order to allow the Plaintiff to obtain new legal counsel. The Court also provided that at the expiration of 45 days, or until 10 days after new counsel appeared, the Plaintiff was required to respond to the Town's outstanding discovery requests. The Judge further added to the Order that failure of the Plaintiff to obtain new legal counsel might result in the striking of Plaintiff's pleadings. On December 9, 2003, Mr. Johnson advised the Town Attorney that his office had not received the discovery they requested nor had any new legal counsel entered an appearance in this matter on behalf of the Plaintiff and therefore, he had prepared a Motion for Sanctions against the Plaintiff for its failure to comply with the Judge's Order. Included within the Motion is a request that

the Court strike the Plaintiff's pleadings and dismiss the lawsuit. On January 14, 2004, the Town Attorney spoke with Mr. Johnson who indicated that his Motion for Sanctions is now scheduled to be heard by the Court on January 28, 2004.

10. **City of Cooper City v. Town of Davie:** The City of Cooper City has filed a lawsuit for Declaratory Judgment and Injunctive Relief and Alternative Petitions for Writ of Quo Warranto and Certiorari alleging that a recent ordinance and a recent resolution relevant to annexation are invalid. The Town Attorney's Office prepared an appropriate Motion to Dismiss and filed same as the Town's insurance carrier has refused to provide a legal defense to this action. As the Town Council has previously been advised, this office filed its Motion to Dismiss citing Cooper City's failure to comply with pertinent provisions of the Florida Statutes. Included within those enumerated provisions cited by the Town Attorney's Office, was Cooper City's failure to adhere to the "Intergovernmental Conflict Dispute Resolution" provisions of the Florida Statutes set forth in Chapter 164. Oral argument on the Town's Motion to Dismiss was heard on March 26, 2003 at which time the Judge indicated that this was the first time a matter such as this has come before him in 19 years on the bench and accordingly, he advised both sides that he would take this matter under advisement and get back to the attorneys shortly with his decision. The Judge thereafter, ordered that Cooper City's lawsuit was to be abated until Cooper City had initiated and exhausted the provisions set forth in Chapter 164. The Town and Cooper City engaged in the conflict resolution proceedings and attempted to resolve the matter without resorting to further legal remedies. As indicated in previous Litigation Reports, the Town Attorney's Office is confident in an ultimate successful outcome of this litigation and it is the Town Attorney's position that the Judge's abatement of Cooper City's lawsuit is further proof of the Town's contention that Cooper City had prematurely and inaccurately filed the present lawsuit. The initial meeting required under the "Intergovernmental Conflict Resolution" provisions of Florida Statutes Chapter 164 was held on April 17, 2003. The meeting was attended by the Town Administrator, Mr. Willi, the City Manager of Cooper City, Mr. Farrell, along with their attorneys. The meeting had been advertised and was open to the public. As a resolution to the conflict was not reached, accordingly, pursuant to Section 164.1055, a joint meeting of the municipalities was held in order to resolve the conflict. The Town Council met in good faith, with the Cooper City Commission on September 30, 2003. Thereafter, representatives from the City of Cooper City and from the Town of Davie attended a mediation on November 13, 2003, at 1:00 P.M. before Mediator Arthur Parkhurst. A resolution of the parties' differences was not reached at mediation and accordingly, the Intergovernmental Conflict procedures failed to resolve this matter. Now that the Intergovernmental Conflict Resolution procedures have been exhausted, the Town Attorney's Office has again set down its Motion to Dismiss the lawsuit and for an award of attorney's fees. The earliest available date on the Court's calendar was February 18, 2004, and oral argument will be heard at that time.

11. **DMG Roadworks, LLC v. Town of Davie.** The property owner has filed a Petition for Writ of Certiorari regarding the Town of Davie's re-zoning of the parcel of land owned by DMG Roadworks from the Broward County M4 Zoning District to a Town of Davie Zoning Catagory. This matter has been referred to special outside legal counsel, Michael

Burke, has filed an Answer on behalf of the Town in response to the property owner's Petition. Oral argument was held in this matter on August 12, 2003. Judge Carney entered an Order granting DMG's Petition for Writ of Certiorari and quashing the Town Council's re-zoning of the Spur Road property to Davie M3. The Court's Order was previously forwarded to the Town Council and at its meeting of September 3, 2003, the Council gave Mr. Burke authority to seek further judicial review of the Trial Court's Order. This authority has been transmitted to Mr. Burke and his office is proceeding accordingly and taking the appropriate legal action. As previously indicated in prior Litigation Reports, the Town Attorney has spoken with Mr. Burke who advised the Town Attorney that his office had filed a Petition for Writ of Certiorari with the 4th District Court of Appeal on October 29, 2003, in an effort to quash the Trial Court's decision. As of January 14, 2004, Mr. Burke's office continues to await a determination from the 4th DCA as to whether it will issue an Order to Show Cause requiring a response from the property owner.

12. **MIGUEL LEAL V. OFFICER WILLIAM BAMFORD, ET AL:** The Plaintiff is suing 14 named police officers from various municipalities, including Lt. William H. Bamford, and K-9 Officer Banjire. It is his contention that in the course of his arrest, the officers used unnecessary force and therefore, violated his rights under 42 U.S.C. Section 1983. He is seeking compensatory damages of $20,000,000.00 and punitive damages of $20,000,000.00. As previously reported to the Town Council, the Town has filed an appropriate response to the Plaintiff's Complaint and the Plaintiff's has been deposed and the Town is moving forward. On October 29, 2003, our special legal counsel, Mr. McDuff, filed a Motion for Summary Judgment in this matter with regard to several of the Defendants named in the lawsuit. As of January 14, 2004, the Motion for Summary Judgment remains pending. Mr. McDuff continues to express his confidence that there is a good possibility that the Court may grant the Town's Motion for Summary Judgment in this case either in whole or in part. Mr. McDuff's legal assistant advises that no trial date as yet has been set for this case.

13. **TOWN OF DAVIE V. UHEL POLLY HAULING, INC.:** The Town Attorney's Office initiated a lawsuit against this Defendant seeking injunctive relief and contending that the Defendant was tortiously interfering with the Town's exclusive franchise with Waste Management with regard to the disposal of solid waste. The Defendant filed a Motion to Dismiss and Oral Argument was originally scheduled for September 10, 2003. Before that date however, the Town Attorney's Office received word from the attorney for the Defendant that its client was willing to enter into a Settlement Agreement with regard to this litigation instituted by the Town Attorney's Office, as well as settle several accompanying Code Enforcement actions. The Town Attorney accordingly, prepared a proposed Stipulated Agreement between the Town of Davie and Uhel Polly Hauling, Inc., which it forwarded to the Code Enforcement Officer for his review. After Mr. Stallone reviewed the document and found it satisfactory, the Stipulation was transmitted to the Defendant's attorney for review. In light of this fact, the hearing on Defendant's Motion to Dismiss was canceled by the Defendant. For a considerable period of time, the Town Attorney's Office continued to await receipt of the executed Stipulation from the attorney for the Defendant. The delay of receipt of the executed Stipulation was brought to the attention of Mr. Stallone, our Code Enforcement Director, and with his concurrence, the Town Attorney's Office wrote to the Defendant's legal counsel demanding an immediate

response. A response has been received and the Defendant has requested certain revisions to the proposed Stipulation of settlement. The Town Attorney's Office and the Code Compliance Division will confer regarding the requested revisions.

14. **SESSA, ET AL V. TOWN OF DAVIE:** As indicated previously, recently, the Town Attorney's Office successfully recovered the sum of $20,000.00 from one property owner on his road assessments pertaining to 4 parcels owned by him. It had also received prior to that date, another $20,000.00 from a different property owner. The Town Attorney's Office thereafter, received an $8,000.00 offer from property owner, Jack Johnson, which settlement offer was presented to the Town Council for consideration at its meeting of November 5, 2003, where the Town Council accepted Mr. Johnson's offer of settlement. The settlement funds have since been received by the Town of Davie and the Town Attorney's Office has filed a Release of Lis Pendens and a Dismissal with Prejudice of this lawsuit. The Town Attorney's Office next received a proposal of settlement from 2238 NW 86th Street, Inc. in the amount of $5,500.00, which was approved by the Town Council, and a settlement proposal from Equipment Buyers, Inc. in the amount of $7,033.27. The letter settlement proposal was approved by the Town Council at its last meeting of December 17, 2003. These funds have now been received. As the Town Attorney's Office has been advised that the funds have cleared in the above cited cases, the Town Attorney's Office has filed appropriate pleadings releasing the Lis Pendens and dismissing the cases against these Defendants. The Town Attorney's Office continues in its efforts to recover the monies owed the Town.

15. **OLDE BRIDGE RUN HOMEOWNERS ASSOCIATION, ET AL V. TOWN OF DAVIE AND OLDE BRIDGE RUN HOMEOWNERS ASSOCIATION, ET AL V. TOWN OF DAVIE AND SHERIDAN HOUSE:** The Town was served with two lawsuits initiated by the Olde Bridge Run Homeowners Association and others. Mr. Burke, our special counsel, filed the Town's Answer to the action for Declaratory Relief and the Town of Davie's response to the Amended Petition for Writ of Certiorari. The other Defendant, Sheridan House, also filed its responses in both lawsuits and a copy has been previously provided to the members of the Town Council. Oral argument was heard regarding the Petition for Writ of Certiorari and on January 13, 2004, Judge Carney denied the Petition for Writ of Certiorari. The action for Declaratory Relief continues to be pending.

16. **TOWN OF DAVIE V. LAMAR ELECTRONICS, INC.:** The Town successfully prosecuted Lamar Electronics, Inc. for several violations of the Town Code before the Special Master. Lamar Electronics has filed an Appeal with the Circuit Court of Broward County. Lamar Electronics filed its Initial Brief and in response, the Town Attorney's Office on behalf of the Town, has filed an Answer Brief, Lamar Electronics in response, filed a Reply Brief. The Town has since filed a Motion to Strike the Reply Brief of the property owner which Motion is pending. The hearing on this Motion is scheduled for January 30, 2004.